

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Sumter County School District 17,

C.A. No. 3:07-cv-01357-JFA

Plaintiff,

vs.

Joseph Heffernan and May Baird, on behalf of
their son, T.H.

**PLAINTIFF'S ANSWER TO
DEFENDANTS' COUNTERCLAIM**

Defendants.

Plaintiff, Sumter County School District 17 (hereinafter "the District"), hereby responds to Defendants' Counterclaim, in accordance with the numbered paragraphs thereof, as follows:

1. Paragraph 1 requests a legal conclusion to which no response is required.

To the extent a response is required, the District lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies the same.

2. Denied as stated. The District admits only that, pursuant to 20 U.S.C. 1415(i)(3)(A), a District Court has jurisdiction over claims to recover attorneys' fees incurred in Individuals with Disabilities Act (IDEA) due process actions.

3. Admitted.

4. Denied as stated. The District admits only that it is a political subdivision of the State of South Carolina that operates schools in Sumter County, South Carolina, and that receives federal funds from the United States Department of Education to implement the Individuals with Disabilities Act (IDEA), 20 U.S.C. 1400 et seq., as amended.

5. Denied as stated. The District admits only that on or about October 30, 2006, Defendants submitted an Amended Due Process Request to the District.

6. Admitted.

7. Admitted in part and denied in part. The District admits only that Defendants' Amended Due Process Request alleges that T.H. was not receiving a free appropriate public education and was entitled to compensatory services. The remaining allegations of Paragraph 7 are denied.

8. Admitted.

9. The District admits that the Local Due Process Hearing Officer issued a Notice of Decision and Decision on or about December 18, 2006. The remaining allegations of this paragraph refer to a written document, the terms of which speak for themselves.

10. The District admits that Defendants filed a timely appeal. The remaining allegations of Paragraph 10 are denied as stated.

11. The District admits that the State Review Officer issued a Decision on or about February 12, 2007. The remaining allegations of this paragraph refer to a written document, the terms of which speak for themselves.

12. Denied as stated. The District admits only that attorneys for the Defendants requested attorneys' fees at the Due Process Hearing. The remaining allegations of Paragraph 12 are denied.

13. Admitted.

14. Admitted in part and denied in part. The District admits only that it informed Defendants' counsel that Defendants' request was not proper at that time. The remaining allegations of Paragraph 14 are denied.

15. Paragraph 15 requests a legal conclusion to which no response is required.

16. Paragraph 16 states a request for relief to which no response is required.

FIRST DEFENSE

Defendants' claim for attorneys' fees under the IDEA is untimely and barred by the applicable statute of limitations.

SECOND DEFENSE

Only a prevailing party, as determined by the Court in accordance with relevant IDEA case law, may claim attorneys' fees for IDEA proceedings and Defendants' claim to such status is stayed pending the outcome of the current action.

THIRD DEFENSE

Any successful claim for attorney fees by a prevailing party is subject to reduction and/or elimination pursuant to the provisions of the IDEA and relevant case law, including, but not limited to 20 U.S.C. §1415(i)(3)(C), 20 U.S.C. §1415(i)(3)(D), and 20 U.S.C. §1415(i)(3)(F).

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Respectfully submitted,

DUFF, WHITE & TURNER, L.L.C.

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September 24, 2007
Columbia, South Carolina